

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CERCLA SECTION
122(h)(1) AGREEMENT**

JONES ROAD GROUNDWATER PLUME SITE

CERCLA SECTION 122(h)(1) CASHOUT AGREEMENT
TABLE OF CONTENTS

I. <u>JURISDICTION</u>	1
II. <u>BACKGROUND</u>	1
III. <u>PARTIES BOUND</u>	3
IV. <u>STATEMENT OF PURPOSE</u>	3
V. <u>DEFINITIONS</u>	4
VI. <u>PAYMENT OF RESPONSE COSTS</u>	6
VII. <u>FAILURE TO COMPLY WITH AGREEMENT</u>	8
VIII. <u>COVENANT NOT TO SUE BY EPA</u>	9
IX. <u>RESERVATIONS OF RIGHTS BY EPA</u>	10
X. <u>COVENANT NOT TO SUE BY SETTLING PARTY</u>	10
XI. <u>EFFECT OF SETTLEMENT/CONTRIBUTION</u>	11
XII. <u>INSTITUTIONAL CONTROLS AND SITE ACCESS</u>	12
XIII. <u>ACCESS TO INFORMATION</u>	13
XIV. <u>RETENTION OF RECORDS</u>	14
XV. <u>CERTIFICATION</u>	15
XVI. <u>NOTICES AND SUBMISSIONS</u>	15
XVII. <u>INTEGRATION/APPENDICES</u>	16
XVIII. <u>PUBLIC COMMENT</u>	17
XIV. <u>EFFECTIVE DATE</u>	17

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2009 SEP 24 AM 11:17
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	SETTLEMENT AGREEMENT
	§	
JONES ROAD GROUNDWATER PLUME SITE	§	U.S. EPA Region 6
HOUSTON, TEXAS	§	CERCLA Docket No. 06-13-08
	§	
HENRY T.T. LUCKY, INC.	§	PROCEEDING UNDER SECTION
SETTLING PARTY	§	122(h)(1) OF CERCLA
	§	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and further delegated to the Superfund Division Director by EPA Delegation No. R6-14-14-D (June 8, 2001). This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice ("DOJ").

2. This Settlement Agreement is made and entered into by EPA and Henry T.T. Lucky Inc. ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Jones Road Groundwater Plume Site ("Site") located in Houston, Harris County, Texas. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA and the State of Texas undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 29, 2003. See 68 Fed. Reg. 55875 (Sept. 29, 2003). The Site is a groundwater plume within the Chicot aquifer contaminated with perchloroethylene ("PCE") from the former Bell Dry Cleaners ("Bell") at 11600 Jones Road.

5.a. In December 2000, the Texas Commission on Environmental Quality ("TCEQ") found PCE in a routine sample from a public well supplying a childcare facility and at least 14 other connections. A total of 231 water wells within a half-mile radius of the former Bell facility were sampled for PCE. PCE concentrations in private and public water supply wells within the half-mile radius ranged from below the maximum contaminant level ("MCL") of 5 ug/L, up to 230 ug/L. Concentrations of PCE at the former Bell facility ranged from 19,000 ug/L to below the MCL. Additional hazardous substances identified in the groundwater samples include those typically found with PCE degradation such as trichloroethylene ("TCE") at 1,800 ug/L; dichloroethene ("DCE") at 3,000 ug/L; and vinyl chloride ("VC") at 160 ug/L.

5.b. During January 2003, the contaminated groundwater plume was documented to extend from the southern end of Echo Spring Lane to Tower Oaks Boulevard and from Timber Hollow to the eastern side of Jones Road. TCEQ is continuing in its effort to define the nature and extent of the contamination, and assess appropriate alternatives to remedy the contamination. EPA provided funding to TCEQ for the conduct of a remedial investigation/feasibility study ("RI/FS") at the Site. TCEQ began field investigation activities on August 25, 2003. The remedial investigation report work is underway.

5.c. Approximately 175 wells are currently being sampled on a quarterly schedule. The most recent quarterly groundwater sampling was conducted during May 2008. A total of 31 wells detected PCE contamination above the MCL of 5 ug/L per the Safe Drinking Water Act. TCEQ installed 35 filtration units on private water supply wells impacted by the PCE contamination. In the summer of 2005, 12 additional groundwater monitoring wells were installed at the Site. On June 29, 2007, EPA finalized an action memorandum authorizing the initiation of a removal action at the Site. The removal action provides for the construction of water lines and connection to the homes and businesses impacted by the PCE contamination. On January 7, 2008, EPA commenced construction on the water lines and connection system. The construction of the water line system for residential and commercial areas was completed in late November 2008.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. The Settling Party currently owns Site property where hazardous substances have been released into the environment, and has owned the property since November 1994. This commercial property has been leased to various entities, including the former Bell Dry

Cleaners facility. Bell Dry Cleaners leased the property from the Settling Party for approximately eight years (i.e., 1994 - 2002), and operated the dry cleaning business for approximately 17 years (i.e., 1985 - 2002).

6.a. EPA prepared administrative records for the final response actions selected and implemented at the Site. Per cost documentation completed and maintained by EPA, EPA has incurred past response costs at or in connection with the Jones Road Groundwater Plume Site in the total amount of \$16,180,810.48, through June 30, 2008.

7. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability to pay for the response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for injunctive relief with regard to the Site and for response incurred and to be incurred at or in connection with the Site, subject to the reservation of rights included in Section IX (Reservation of Rights by EPA). In addition, the Settling Party agrees to comply with and implement institutional controls and use restrictions EPA deems necessary for the property; to take reasonable steps with respect the hazardous substances located on the Site property owned by the Settling Party; to cooperate with, provide, and ensure present and future access to the property owned by the Settling Party; to comply with information requests and provide legally required

notices concerning Site property. Should EPA request so, the Settling Party shall execute and record a deed notice or notices identifying the restrictions on the property within 30 days after EPA provides written notice of such requirement to the Settling Party. The Settling Party shall notify EPA within 15 days of filing the deed notice identifying the restrictions with the Harris County Clerk or Deputy County Clerk Recording Division.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Party.

i. "Property" shall mean that portion of the Site that is owned by Settling Party as of March 2009. The Property is located at 11600 Jones Road, Houston, Harris County, Texas, and is

designated by the Harris County Appraisal District with the following property description: TR 1A-2, ABST 851 W WATERS.

j. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

l. "Settling Party" shall mean Henry T.T. Lucky Inc.

m. "Site" shall mean the Jones Road Groundwater Plume Superfund Site, encompassing a groundwater plume contaminated with PCE originating from the former Bell Dry Cleaners located at 11600 Jones Road, Houston, Harris County, Texas. The Site boundaries are approximately one block east and two blocks west of Jones Road beginning just north of the intersection with Neeshaw Drive, and continuing to just south of the intersection with Woodedge Drive.

n. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

o. "Fair Market Value" shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, "fair market value" shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, "fair market value" shall mean the balance of Settling Party's mortgage on the Property at the time of the transfer.

p. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Party for each transfer (or if the consideration cannot be determined, the fair market value of the Property) less i) the balance of the Settling Party's mortgages on the Property, ii) closing costs limited to those reasonably incurred and actually paid by the Settling Party associated with the transfer of the Property, and iii) federal and state taxes owed on the proceeds. Settling Party shall provide EPA and the State with documentation sufficient to show the total value of all consideration received by the Settling Party for each transfer (or if the consideration cannot be determined, the fair market value of the property) at the time of each transfer, the amount of the proceeds of the transfer, and the amounts corresponding to items i through iii above. This documentation shall include, but not be limited to, the report of an appraisal paid for by the Settling Party, performed by an appraiser satisfactory to the Parties, upon appraisal assumptions satisfactory to the Parties. The documentation must also include, either as part of the report or separately, 1) a tax statement showing the assessed valuation of the Property for each of the three years immediately preceding the Transfer, and 2) a schedule showing all

outstanding indebtedness on the Property.

q. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Party (or its successors or heirs) of the Property, or any portion thereof, or of the entity owning the Property i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure. A transfer does not include a transfer pursuant to an inheritance or a bequest.

VI. PAYMENT OF RESPONSE COSTS

12. Within 30 days after the effective date of this Settlement Agreement as defined by Paragraph 40, Settling Party shall pay to the EPA Hazardous Substance Superfund \$160,000. Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Party by EPA Region 6, and shall be accompanied by a statement identifying the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID #06NK, the EPA docket number for this action (06-13-08), and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

13.a. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID #06NK and the EPA docket number for this action (06-13-08). The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the EPA Hazardous Substance Superfund. The above notice shall be sent to:

Chief, Enforcement Assessment Section (6SF-EA)
U.S. Environmental Protection Agency, Region 6
Superfund Division
1445 Ross Avenue
Dallas, TX 75202-2733

13.b. The Settling Party may choose to pay in annual installments as specified herein. If payment by annual installment is chosen in lieu of a one-time payment as specified in Paragraph 12, the Settling Party shall pay to the EPA Hazardous Substance Superfund the sum of \$160,000, plus an additional sum for interest as explained below. Payment shall be made in four annual installments. Each installment, except for the first, on which no interest shall be due, shall include the principle amount due plus an additional sum for accrued interest on the declining

balance calculated from the effective date of the Settlement Agreement as defined in Paragraph 40. The first payment of \$40,00 shall be due within thirty 30 days of the effective date of this Settlement Agreement. The remaining three subsequent annual payments of \$ 40,000, plus interest, shall be due on the first day of July for each successive year until the Settling Party has paid the sum of \$160,000, plus interest, in full. Settling Party may accelerate these payments, and interest due on the accelerated payment shall be reduced accordingly.

Annual payments (i.e., principle and interest) shall be made by certified or cashier's check made payable to EPA Hazardous Substance Superfund." The check, or letter accompanying the check, shall reference the EPA Region and Site/Spill ID #06NK and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID #06NK and the EPA docket number for this action (06-13-08).

13.c. Payment of Proceeds of Sale of Property. Settling Party agrees that the Settling Party will not sell, assign, transfer or exchange the Property except by means of a transfer.

i. In addition to any payments made under Paragraphs 12 or 13, if at the time of the transfer there remains an outstanding balance under Paragraphs 12, 13, or 15, the Settling Party shall pay EPA 100% of the outstanding balances under Paragraphs 12, 13, and 15 from the net sales proceeds of the transfer of the Property. Payment shall be made within 14 days of the effective date of the transfer of Property.

ii. Payment shall be made by certified or cashier's check made payable to "EPA hazardous Substance Superfund." The check, or letter accompanying the check, shall reference the name and address of the Settling Party, the Site name, the EPA Region and Site/Spill ID#06NK, and the EPA docket number for this action (06-13-08), and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Settling Party shall send notice that payment has been made in accordance with Paragraph

13, and the payment shall be deposited by EPA in accordance with Paragraph 13 as well.

iii. At least 30 days prior to any such transfer, Settling Party shall notify EPA of the proposed transfer, which notice shall include a description of the property to be sold, the identity of the purchaser, the terms of the transfer, the consideration to be paid, and a copy of the transfer agreement. The proposed sales price must be at least equal to the fair market value of the Property based upon an appraisal obtained within one (1) year of the transfer. Settling Party shall notify EPA of the completion of the transfer within 10 days of the date of closing and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth net sales proceeds and the amount payable to EPA.

iv. In the event of a transfer of the Property or any portion thereof, Settling Party shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA and Settling Parties modify this Settlement Agreement in writing.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. If Settling Party fails to make any payment required by Paragraphs 12 and 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15.a. If any amounts due under Paragraph 12 and 13 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$8,500 per violation per day that such payment is late.

15.b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of Settling Party, the Site name, the EPA Region and Site/Spill ID #06NK, and the EPA docket number for this action (06-13-08), and shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

15.c. At the time of each payment, Settling Party shall send notice that such payment has been made to EPA in accordance with Section XIV (Notices and Submissions). Such notice shall identify the Region and Site-Spill ID #06NK and the EPA Docket Number for this action (06-13-08). The above notice shall be sent to:

Chief, Enforcement Assessment Section (6SF-EA)
U.S. Environmental Protection Agency, Region 6
Superfund Division
1445 Ross Avenue
Dallas, TX 75202-2733

15.d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with any term or condition of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraphs 12 and 13 or from performance of any other requirements of this Agreement.

VIII. COVENANT NOT TO SUE BY EPA

18. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Settlement Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not

extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

19. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and
- f. liability arising from the Settling Party's failure to comply with and implement institutional controls and use restrictions EPA deems necessary for the property; to take reasonable steps with respect the hazardous substances located on the Site property owned by the Settling Party; to cooperate with, provide, and ensure present and future access to the property owned by the Settling Party; to comply with information requests and provide legally required notices concerning Site property.

20. Notwithstanding any other provision of this Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 36(b), is false or, in an material respect, inaccurate.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution; the State of Texas Constitution, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

25. Except as provided in Paragraph 24, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

26. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Party is entitled, as of the effective date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement

Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations. In the event that the Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 24, the Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which the Settling Party has resolved its liability to the United States, as of the effective date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for matters addressed as defined above.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. INSTITUTIONAL CONTROLS AND SITE ACCESS

28. With respect to Site property owned by the Settling Party where access and/or land and groundwater use restrictions are needed to implement present or future response measures at the Site, the Settling Party shall provide the following assistance. Upon the effective date of this Agreement, Settling Party agrees to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by Settling Party to which access is determined by EPA to be required for the implementation of this Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring, investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);

29. Commencing upon the effective date of this Agreement, Settling Party agrees to refrain from

using Site property owned by the Settling Party in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the present and future response measures to be performed at the Site. Such restrictions include:

- a. No interference with the operation and maintenance, monitoring, and efficacy of all components and structures and improvements relating to the response actions selected and implemented at the Site;
- b. No operations on the property which extract, consume or otherwise use the underlying contaminated groundwater underlying the property or adjoining property unless such activities are approved by EPA in writing;
- c. No agricultural, recreational, residential, commercial or industrial use of the property including but not limited to, any excavation, grading or other activity involving movement of soils at the Site, any waste disposal, and any construction or placement of any residences, buildings, or structures other than for the purpose of implementing, monitoring, and maintaining the protectiveness of the present and future response actions to be undertaken at the Site, unless otherwise approved in advance and in writing by EPA and otherwise consistent with any recorded use restrictions;
- d. No construction, installation, or use of any buildings, wells, pipes, roads, ditches, or any other structures on the property that may affect the construction, physical integrity, or efficacy of present and future response actions to be undertaken at the Site, unless such construction, installation or use is approved in advance and in writing by EPA; and
- e. Should EPA request so, the Settling Party shall execute and record a deed notice or notices specifically identifying the land and ground water use restrictions on the property within 30 days after EPA provides written notice of such requirement to the Settling Party. The Settling Party shall notify EPA within 15 days of filing any deed notice identifying the restrictions with the Harris County Clerk or Deputy County Clerk Recording Division. The deed notice shall specifically identify this Settlement Agreement and the terms and conditions provided in Section XII (Institutional Controls and Site Controls) within the body of the deed notice.

30. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. ACCESS TO INFORMATION

31. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,

reports, sample traffic routing, correspondence, or other documents or information related to the Site.

32. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

34. Until 15 years after the effective date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records, and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the

following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record will be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

XV. CERTIFICATION

36. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XVI. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

George Malone, III, Assistant Regional Counsel (6RC-S)
U.S. Environmental Protection Agency, Region 6
Office of Regional Counsel
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, Enforcement Assessment Section (6SF-EA)
U.S. Environmental Protection Agency, Region 6
Superfund Division
1445 Ross Avenue
Dallas, TX 75202-2733

As to Settling Party:

Henry A. Davidson, President
Henry T.T. Lucky, Inc.
9222 Easthaven Blvd.
Houston, TX 77075-1763

XVII. INTEGRATION/APPENDICES

38. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling Party. Financial documents include:

- a. U.S. Federal Income Tax Return, Form 1120S, for the Settling Party for the years 2000 - 2007.
- b. Settling Party's Ability-to-Pay Financial Data Request Form dated July 20, 2005.
- c. Financial Reports for the Settling Party for the years ending December 31, 2002 - April 15, 2008.
- d. Settling Party's Chapter 11 Bankruptcy Filing, U. S. Bankruptcy Court of Southern District of Texas Docket Report, Case No. 03-36918, filed May 9, 2003, and closed March 23, 2004.

XVIII. PUBLIC COMMENT

39. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XIV. EFFECTIVE DATE

40. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 39 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Agreement.

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-13-08, In the Matter of Henry T.T. Lucky Inc.

The undersigned representative of the Settling Party certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind the party he represents to this document.

Agreed this 3RD day of February 2009.

For: Henry T.T. Lucky, Inc. (Settling Party)


Henry A. Davidson, President

Henry T.T. Lucky, Inc.

~~9222 Easthaven Blvd.~~

~~Houston, TX 77075-1763~~

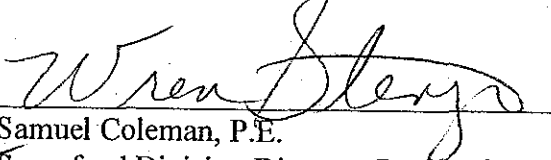
11600 JONES RD. SUITE 108

HOUSTON, TEXAS 77070

The Undersigned Party enters into this Administrative Order on Consent, CERCLA Docket No. 06-13-08, In the Matter of Henry T.T. Lucky Inc.

It is so ORDERED and Agreed this 20th day of July 2009.

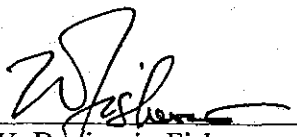
For: U.S. Environmental Protection Agency

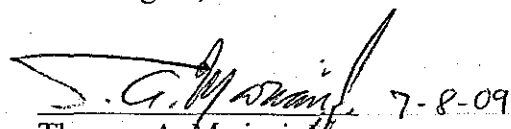


for Samuel Coleman, P.E.
Superfund Division Director, Region 6
U. S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

Signature Page CERCLA Docket No. 06-13-08, In the Matter of Henry T.T. Lucky, Inc.

For: U.S. Department of Justice


W. Benjamin Fisherow
Deputy Section Chief
Enforcement Section
U.S. Department of Justice
Washington, D.C. 20044-7611


Thomas A. Mariani, Jr.
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611